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FEDERAL AUTHORITY TO INVESTIGATE AIRCRAFT ACCIDENTS

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## Federal Authority to Investigate Aircraft Accidents

The Civil Aeronautics Act of 1938 created the Civil Aeronautics Authority. The Authority was redesignated the Civil Aeronautics Board (CAB) in a 1940 reorganization, and the CAB was continued in the Federal Aviation Act of 1958. In 1968 a Department of Transportation was established. (F.C.A. 49 §1652 (Supp. 1968)). §1654 established within this department a National Transportation Safety Board, and §1655 transfers the duties of the CAB to this new Safety Board. The actual duties of the Safety Board remain essentially unchanged from when they were first spelled out in the 1938 Civil Aeronautics Act. Pertinent parts are as follows (F.C.A. 49 §582):

- "(1) Make rules and regulations, subject to the approval of the authority, governing notification and report of accidents involving aircraft;
- (2) Investigate such accidents and report to the Authority the facts, conditions, and circumstances relating to each accident and the probable cause thereof;"

How the investigation team is organized and what the team looks for is recounted in excellent detail in a speech by a CAB Hearing Officer, McWhorter, "Airplane Accident Investigation." The speech was given at an aviation negligence symposium and is reported in 28 Tenn. L.Rev. 117 (Win. '61). Another discussion of what investigators look for is contained in Whitehead, "Aviation Accidents - Investigation and Litigation," 11 Defense L. J. 35 (1962).

The rules pertaining to aircraft accidents, incidents, overdue aircraft, and safety investigations are contained in 14 C.F.R. 320. The CAB is to be notified "immediately, and by the most expeditious means available" when

there has been any type of aircraft accident. (320.5) Section 320.10 contains the rules concerning preservation, access to and release of aircraft wreckage, mail, cargo, and records. The operator of the aircraft is responsible for the wreckage until the CAB (now the Safety Board) takes over or until a CAB release is given. Before the CAB takes over, nothing can be moved except to care for the injured, to protect the wreckage from further damage, or to protect the public. Section 320.11 provides that once the Board takes over no one except CAB personnel will be granted "access" to the wreckage until it is released.

Comments:

1. In some accidents the wreckage is scattered over a large area. In these situations the entire area is cordoned off and the investigators call in help (usually local military personnel) to comb the area for parts of the wreckage. I can find no mention of any efforts to secure the permission of landowners involved for these troops to enter private property. Nor can I find any mention of compensation given to the landowners for damage which might be done to their land by the searchers.

2. The crash sites are cordoned off and no one is allowed entry except personnel on the investigating team. I can find no mention of problems which might arise when a person is excluded from the remains of his own home or a farmer is prohibited from entering his own fields.

3. The legislation which exists does not specifically authorize the invasion of private property, but this is implicit in the legislation. Specific reference to any intrusion on private property was probably left out to avoid any constitutional challenges to the legislation, but in most cases some sort of intrusion would be necessary in order to accomplish the

investigation. Of course, any such intrusion can be justified on a public policy basis, but rather than risk a fight the legislators skirted the issue by leaving out any reference to entry on private property. I suspect that any potentially complaining landowners are mollified by the CAB - probably by payment for damage done by the investigators or inconvenience caused by the investigation. Or perhaps the landowners involved are so anxious to get a damage settlement from the airline involved that the question of compensation from the inspection team has never come up.